

AO 106 (Rev. 04/10) Application for a Search Warrant

FILED
UNITED STATES DISTRICT COURT
LAS CRUCES, NEW MEXICO

UNITED STATES DISTRICT COURT

APR 25 2023

for the
District of New Mexico



MITCHELL R. ELFERS
CLERK OF COURT

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)
INSTAGRAM ACCOUNT MARKDELOS27 BELONGING
TO MARK DE LOS REYES, ACCESSED VIA HIS
CELLPHONE, A SAMSUNG GALAXY A51 WITH IMEI
356172110379903, IN LE POSSESSION

Case No. 23-849 MR

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A

located in the _____ District of _____ New Mexico _____, there is now concealed (identify the person or describe the property to be seized):
See Attachment B

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
☐ contraband, fruits of crime, or other items illegally possessed;
☐ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	Offense Description
18 USC 2422(b)	Enticement of a Minor

The application is based on these facts:
See Attachment

- ☒ Continued on the attached sheet.
☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

Special Agent David Gabriel

Printed name and title

Sworn to before me and signed ^{telephonically} in my presence.

Date: 24 April 2023

City and state: Las Cruces, NM

Judge's signature

U.S. Magistrate Judge Damian L. Martinez

Printed name and title

United States District Court

District of New Mexico

INSTAGRAM ACCOUNT MARKDELOS27
BELONGING TO MARK DE LOS REYES,
ACCESSED VIA HIS CELLPHONE, A
SAMSUNG GALAXY A51 WITH IMEI
356172110379903, CURRENTLY IN LAW
ENFORCEMENT POSSESSION

Case No. _____

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, David S. Gabriel, a Special Agent with the Federal Bureau of Investigation (FBI),
being duly sworn, depose and state as follows:

1. I have been employed as a Special Agent (SA) of the FBI since May of 2018. I am classified, trained, and employed as a federal law enforcement officer with statutory arrest authority charged with conducting criminal investigations of alleged violations of federal criminal statutes, including Title 18 of the United States Code. I am currently assigned to the Albuquerque Field Office, Las Cruces Resident Agency, New Mexico. Prior to my current position, I was employed for six years as an analyst and briefer in a federal intelligence service. I am currently assigned to investigate violations of federal law, including Indian Country Crimes, assaults on federal officers, and violent crimes against children.

2. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

3. I make this affidavit in support of a search warrant based on probable cause that the Instagram account MARKDELOS27, belonging to Mark De Los Reyes, contains evidence of

a violation of Title 18, United States Code, Sections 2422(b). More specifically, I am seeking to access this account via one of De Los Reyes's cell phones, a Samsung Galaxy A51 with IMEI 356172110379903, which I will refer to as "the old phone" for which I have both consent to search and a federal search warrant.

PROBABLE CAUSE

4. The following information was provided to me by the El Paso Police Department and reflects information from their official reports:

5. On 16 October 2022 at around 0130, the father of thirteen-year-old Victim #1 noticed she was missing. He used a software application to ping her location, which led to an area down the street from their residence. He could hear the phone ringing and walked in that direction, where he heard a car door slam and observed Victim #1 walking away from a vehicle. The father approached the vehicle and observed a male in the vehicle, who attempted to drive away. The father stopped the vehicle from leaving and was able to detain the subject until law enforcement arrived. The man was identified by law enforcement as Mark David De Los Reyes.

6. EMS arrived and made contact with Victim #1, who stated she was raped. According to the victim, the offender and her started messaging on Instagram the day before and agreed to meet so they could "fuck around," which she believed meant joke around. De Los Reyes offered her THC cartridges. Upon meeting up in his car, the two moved to the backseat, where De Los Reyes penetrated the victim's vagina with his penis. The victim felt fluid but was unsure if it was ejaculate. He also pulled down her bra and bit her breasts.

7. During a subsequent interview, Victim #1 stated the day before she received messages from an unknown man who looked like he was in his 20s. She told him she was a minor, and he offered her money or THC cartridges. The male asked her to show a picture of her

face and she did. They agreed to meet but Victim#1 stated she did not agree to “fuck him.” They met in his car and crawled into the back seat together. The male undressed her and inserted his penis into her. He kept saying “make me cum, make me cum,” while Victim #1 said “stop, stop, stop.” She identified the man as “Mark.” Victim #1 provided her Instagram account and his. Victim #1 stated that “Mark” sent her a picture of his penis, and that he asked her for sexually explicit images of herself, which she sent to him. Victim #1 stated that the images showed her “boobs and vagina.” Victim#1 stated that “Mark” gave her a “cake” THC cartridge, which she might have left in the vehicle. Victim#1 believed “Mark” had a Samsung phone because her father handed her the phone while attempting to detain De Los Reyes.

8. A sexual assault exam was performed on the victim and male DNA was collected from the victim’s vaginal area. El Paso police also collected DNA evidence from De Los Reyes’s vehicle under the authority of a search warrant. While searching it, they observed several THC cartridges, including a “cake” flavored one. They also collected DNA from De Los Reyes on a buccal swab and seized the old phone.

9. El Paso police served a search warrant to Instagram/Facebook. Victim #1’s iPhone was also downloaded with the consent of her parents. El Paso police observed a message between Victim#1 and Instagram account Markdelos27 in which she discloses she is a minor. They also observed messages between Victim #1 and a friend where she sent photos of the Markdelos27 Instagram account saying she planned to meet up with him.

10. I have personally reviewed those text messages, which contain images of the Instagram conversation, including the message where she tells De Los Reyes that she is a minor, and a picture of “CAKE” THC cartridges. I have also reviewed the contents of the Instagram

warrant, which contain a record of messages between Victim #1's Instagram account and user markdelos27 on 16 October.

11. Of note, the information returned from the Instagram warrant shows the Gmail email address markdlreyes92@gmail.com is registered to the markdelos27 Instagram account. According to the return, the registered user of this account is "Mark de los reyes." According to his driver's license, De Los Reyes is 30 years old, having been born in 1992. I further compared the profile photo associated with the Instagram account with Mark De Los Reyes's driver's license and the photos Victim #1 sent of the Instagram account she was communicating with to her friend and believe them to be the same man.

12. On 9 March 2023, I arrested Mark De Los Reyes on a federal arrest warrant at an El Paso Police Department facility. During a video-and-audio-recorded interview, my partner and I read him his Miranda rights and he agreed to talk to us without his attorney present. During the interview, De Los Reyes admitted to being the user of the aforementioned Instagram account and the one who sent the messages to the minor. I showed him photographs of several messages he sent to the minor, including the one where she told him she was a minor, and he admitted to sending or receiving these messages on the phone he had with him when he was arrested in October 2022. De Los Reyes stated that this phone belonged to him.

13. In the interview, De Los Reyes further stated that he initiated conversation on Instagram with Victim #1 and knew she was a minor because she told him. De Los Reyes believes he asked Victim #1 to send him nude images of herself, despite knowing that she was a minor, and sent her a picture of his erect penis. They agreed to meet up, and De Los Reyes offered her THC to incentivize her to meet him. He then drove to an area near her house on the other side of El Paso, which he estimates took forty to sixty minutes. Upon meeting near her

house, he believed the girl looked even younger than he thought she was, estimating her age at twelve years old.

14. De Los Reyes admitted to having penetrative vaginal sex with Victim #1 in the back of his car, although he asserted that it was consensual and that she did not tell him no. De Los Reyes stopped midway through the act because he knew it was wrong. De Los Reyes then attempted to leave, but was stopped by Victim #1's father and detained until police arrived and arrested him. De Los Reyes was adamant that this was the first time he had ever met with a minor.

15. De Los Reyes further told me that he had attempted to delete the messages he sent to the victim from his phone because he did not want anyone to see them, and told the victim to do the same. However, he admitted that he knew deleting the messages on his phone probably did not fully delete them. De Los Reyes told me he believed a review of the phone would show the chats and images exchanged between him and the victim.

16. At the conclusion of the interview, De Los Reyes provided me with written consent to search this phone (and a replacement phone "the new phone" he had with him when I arrested him) in order to corroborate the information he provided me. In support of this, he provided me with the passcodes to both devices. Both phones were assigned cell phone number 915-331-0583.

17. While reviewing the new phone, which I accessed using the password De Los Reyes voluntarily provided me, I observed messages on De Los Reyes's Instagram account between him and the account identified as the victim's. The messages, appear to have been sent around 0131 on October 16th. The messages appear to be De Los Reyes attempting to meet up

with the victim, saying “Here ?”, “Okay”, “I’ll park at the stop”, “Or no”, and “I’m at the stop sign.

18. Upon locating this evidence, and although I had his consent to access and examine all contents of these devices, I obtained a federal search warrant for both of these devices out of an abundance of caution. The warrant was signed 6 April 23 by the Honorable Miguel Torres, U.S. Magistrate Judge, El Paso Division.

19. After we received this warrant, FBI Special Agent Sean Macmanus downloaded the contents of the old phone using Cellebrite. On 24 April 2023, I reviewed the contents of this download and observed multiple media files of note. The files appear to be from Victim #1’s Instagram account to De Los Reyes’s account and show a nude female, who I believe to be Victim #1, naked from the shoulders down to the feet. I also observed photos of CAKE THC cartridges similar to those I described above.

20. Due to the newer nature of the phone, the Cellebrite extraction did not capture the contents of De Los Reyes’s Instagram account stored on the phone. Under the authority of the federal search warrant described above (and the written consent De Los Reyes provided) I accessed the phone (placed in airplane mode, and therefore not able to transmit or receive) directly on 24 April and accessed the Instagram application, which was logged in as MARKDELOS27. I navigated to the messages section and observed a message thread between Victim #1’s Instagram account and De Los Reyes’s account. There I observed more messages than I had observed on the new phone, specifically De Los Reyes telling Victim #1 he had arrived and asking where he could park, along with Victim #1’s responses. Further up (and therefore, earlier in the conversation with visible time stamp “Oct 16, 12:44 A.M”) in the thread, I observed eight messages labeled “Photo” with a play button, which I know from my training

and experience indicate the exchange of a media file between users. Additionally, I observed a circular “loading” graphic, which I know indicates more content is available for download. However, I know that often modern smartphones will save large media files off of the device to save storage space and redownload them to the device when the user accesses the file, and I believe that is the case here. Because the phone remains in airplane mode, it is not currently able to download that media from Instagram. I have photographs of these messages to Attachment A.

21. The El Paso Police Department already obtained and executed a state search warrant for De Los Reyes’s Instagram account in November 2022 and I have reviewed the results of that warrant, which show a number of messages exchanged between the MARKDELOS27 account and Victim #1’s account. The return did not, however, show content of these messages, which from my experience can occur when obtaining returns from Instagram.

22. Based on Victim #1’s statement, De Los Reyes’s statement, the search warrant returns from Instagram, the messages I observed from Victim #1’s device, and these messages, I believe those messages and images in De Los Reyes’s account will contain further evidence of violation of Title 18 U.S.C. 2422(b), and am seeking this warrant to allow me to access those messages and any other messages exchanged between those two accounts. More specifically, I am seeking authorization for the FBI to access that Instagram account through De Los Reyes’s device by turning off airplane mode and allowing the device to connect to the internet, which will download additional user account data from Instagram. I believe that is currently the only way to access the contents of those messages. The device is now located at the FBI office in Las Cruces, NM, and therefore I am seeking this warrant in the District of New Mexico.

SPECIFICS OF SEARCH AND SEIZURE OF COMPUTER SYSTEMS

23. Based on my training and experience, I use the following technical terms to convey the following meanings:

- a. **Wireless telephone:** A wireless telephone (or mobile telephone, or cellular telephone, or cell phone) is a handheld wireless device used for voice and data communication through radio signals. These telephones send signals through networks of transmitter/receivers, enabling communication with other wireless telephones or traditional “land line” telephones. A wireless telephone usually contains a “call log,” which records the telephone number, date, and time of calls made to and from the phone. In addition to enabling voice communications, wireless telephones offer a broad range of capabilities. These capabilities include: storing names and phone numbers in electronic “address books;” sending, receiving, and storing text messages and e-mail; taking, sending, receiving, and storing still photographs and moving video; storing and playing back audio files; storing dates, appointments, and other information on personal calendars; and accessing and downloading information from the Internet. Wireless telephones may also include global positioning system (“GPS”) technology for determining the location of the device.
- b. **GPS:** A GPS navigation device uses the Global Positioning System to display its current location. It often contains records the locations where it has been. Some GPS navigation devices can give a user driving or walking directions to another location. These devices can contain records of the addresses or locations involved in such navigation. The Global

Positioning System (generally abbreviated “GPS”) consists of 24 NAVSTAR satellites orbiting the Earth. Each satellite contains an extremely accurate clock. Each satellite repeatedly transmits by radio a mathematical representation of the current time, combined with a special sequence of numbers. These signals are sent by radio, using specifications that are publicly available. A GPS antenna on Earth can receive those signals. When a GPS antenna receives signals from at least four satellites, a computer connected to that antenna can mathematically calculate the antenna’s latitude, longitude, and sometimes altitude with a high level of precision.

- c. IP Address: An Internet Protocol address (or simply “IP address”) is a unique numeric address used by computers on the Internet. An IP address is a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every computer attached to the Internet computer must be assigned an IP address so that Internet traffic sent from and directed to that computer may be directed properly from its source to its destination. Most Internet service providers control a range of IP addresses. Some computers have static—that is, long-term—IP addresses, while other computers have dynamic—that is, frequently changed—IP addresses.
- d. Internet: The Internet is a global network of computers and other electronic devices that communicate with each other. Due to the structure of the Internet, connections between devices on the Internet often cross

state and international borders, even when the devices communicating with each other are in the same state.

24. Based on my training, experience, and research, I know that the devices described in this warrant have capabilities that allow them to serve as cell phones. In my training and experience, examining data stored on devices of this type can uncover, among other things, evidence that reveals or suggests who possessed or used the device.

ELECTRONIC STORAGE AND FORENSIC ANALYSIS

25. Based on my knowledge, training, and experience, I know that social media companies like Instagram can maintain user account data for long periods of time. I know that this user data can be accessed by users while logged into their accounts.

26. Instagram is a social media company owned by Meta Platforms, Inc. (“Meta”) which allows users to create accounts where they can, among other functions, exchange messages including media. In my training and experience, evidence of who was using an Instagram account and from where, and evidence related to criminal activity of the kind described above, may be found in the files and records maintained by the company on their servers. This evidence may establish the “who, what, why, when, where, and how” of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or, alternatively, to exclude the innocent from further suspicion. For example, based on my own experience with social media platforms like Instagram and what I have already observed on the devices, I believe there will be messages and media in this Instagram account in which De Los Reyes enticed Victim #1.

27. In addition, the user’s account activity, logs, stored electronic communications, and other data retained by Instagram can indicate who has used or controlled the account. This

“user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence. For example, subscriber information may be evidence of who used or controlled the account at a relevant time. As an example, because every device has unique hardware and software identifiers, and because every device that connects to the Internet must use an IP address, IP address and device identifier information can help to identify which computers or other devices were used to access the account. Such information also allows investigators to understand the geographic and chronological context of access, use, and events relating to the crime under investigation.

28. Account activity may also provide relevant insight into the account owner’s state of mind as it relates to the offenses under investigation. For example, information on the account may indicate the owner’s motive and intent to commit a crime (e.g., information indicating a plan to commit a crime), or consciousness of guilt (e.g., deleting account information in an effort to conceal evidence from law enforcement). De Los Reyes told me that he had instructed Victim #1 to delete his messages, and told me he had attempted to do the same.

29. Therefore, Instagram’s servers are likely to contain stored electronic communications, location data, and other information concerning subscribers and their use of Instagram services. In my training and experience, such information may constitute evidence of the crimes under investigation including information that can be used to identify the account’s user or users and the subject’s location at the time of the crime.

30. *Forensic evidence.* As further described in Attachment B, this application seeks permission to locate not only electronically stored information that might serve as direct evidence of the crimes described on the warrant, but also forensic evidence that establishes how an account was used, the purpose of its use, who used it, and when. There is probable cause to

believe that this forensic electronic evidence might accessible via the account via the device because:

a) Stored account data can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file).

b) Forensic evidence on a device can also indicate who has used or controlled the device. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence.

c) A person with appropriate familiarity with how an electronic device works may, after examining this forensic evidence in its proper context, be able to draw conclusions about how electronic devices were used, the purpose of their use, who used them, and when.

d) The process of identifying the exact electronically stored information on a storage medium that is necessary to draw an accurate conclusion is a dynamic process. Electronic evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.

e) Further, in finding evidence of how a device was used, the purpose of its use, who used it, and when, sometimes it is necessary to establish that a particular thing is not present on a storage medium.

f) I know that when an individual uses an electronic device to entice a minor, the individual's electronic device will generally serve both as an instrumentality for committing the crime, and also as a storage medium for evidence of the crime. The electronic device is an instrumentality of the crime because it is used as a means of committing the criminal offense. The electronic device is also likely to be a storage medium for evidence of crime. From my training and experience, I believe that an electronic device used to commit a crime of this type may contain: data that is evidence of how the electronic device was used; data that was sent or received; and other records that indicate the nature of the offense.

31. *Nature of examination.* Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant I am applying for would permit the examination of the account via the device consistent with the warrant. The examination may require authorities to employ techniques, including but not limited to computer-assisted scans of the entire medium, that might expose many parts of the device to human inspection in order to determine whether it is evidence described by the warrant.

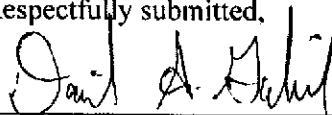
32. *Manner of execution.* Because this warrant seeks permission to examine an account via a device already in law enforcement's possession, the execution of this warrant does not involve the physical intrusion onto a premises. Consequently, I submit there is reasonable cause for the Court to authorize execution of the warrant at any time in the day or night.

AUTHORIZATION REQUEST

33. Based on the foregoing, I request that the Court issue the proposed search warrant, pursuant to Federal Rule of Criminal Procedure 41.


34. I further request because the warrant will be served via a device (a Samsung Galaxy A51 with IMEI 356172110379903) already in law enforcement possession, the court allows that reasonable cause exists to permit the execution of the requested warrant at any time in the day or night.

Respectfully submitted,



David S. Gabriel
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me on 24 April, 2023

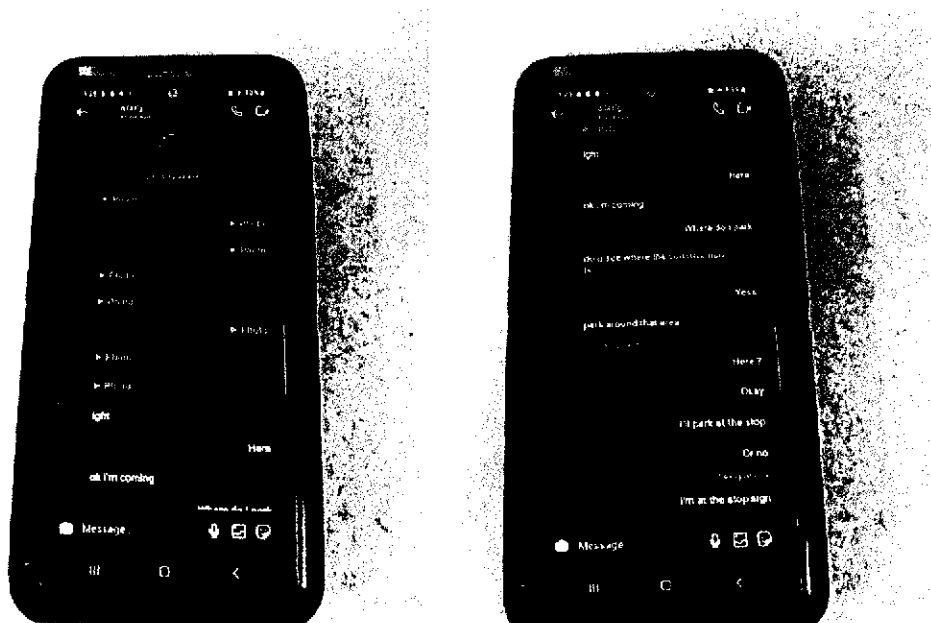

Honorable Damian L. Martinez
UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A

Property to Be Searched

This warrant applies to the Instagram account MARKDELOS27, which is to be accessed via a cellular device assigned call number 915-331-0583, a Samsung Galaxy A51 with IMEI 356172110379903, that is stored at premises controlled by the FBI in Las Cruces, NM. The account and the device belong to Mark David De Los Reyes.

Images of the Account to Be Searched



ATTACHMENT B

Particular Things to be Seized

The following materials, which constitutes evidence of the commission of a criminal offense, contraband, the fruits of crime, or property designed or intended to use or which is or has been used as the means of committing a criminal offense, namely violations of 18 U.S.C. §§ 2422(b) enticement of a minor:

1. All records, information, messages and visual depictions or other files (including images, videos, negatives, still photos, video tapes, artists drawings, slides and any type of computer formatted file) which show enticement of a minor violations, including communications with and photos of the victim
2. Evidence indicating how and when the account described above was accessed or used, to determine the geographic and chronological context of account access, use, and events relating to the crimes under investigation and to the account owner.

This warrant authorizes a download of account data from Instagram for Mark De Los Reyes's Instagram account to the device belong to De Los Reyes and subsequent examination and duplication of this data for forensic and evidentiary purposes in order to locate evidence, fruits, and instrumentalities described in this warrant. Specifically, this warrant authorizes the FBI to access the Instagram account belonging to De Los Reyes through De Los Reyes's device by allowing the device to connect to the internet, accessing De Los Reyes's Instagram account through the Instagram application on the device, and then accessing and downloading any available messages and media from the Instagram account, to include "refreshing," "scrolling," "swiping down" or otherwise updating the account and device to access and download content from Instagram. I believe that is currently the only way to access the contents of those messages. The review of this electronic data may be conducted by any government personnel assisting in the investigation, who may include, in addition to law enforcement officers and agents, attorneys

for the government, attorney support staff, and technical experts. Pursuant to this warrant, the FBI shall deliver a complete copy of the seized or copied electronic data to the custody and control of attorneys for the government and their support staff for their independent review.

As used above, the terms “records” and “information” includes all forms of creation or storage, including any form of computer or electronic storage (such as hard disks or other media that can store data); any handmade form (such as writing); any mechanical form (such as printing or typing); and any photographic form (such as microfilm, microfiche, prints, slides, negatives, videotapes, motion pictures, or photocopies).

The term “computer” includes all types of electronic, magnetic, optical, electrochemical, or other high speed data processing devices performing logical, arithmetic, or storage functions, including desktop computers, notebook computers, mobile cellphones, tablets, server computers, and network hardware.

The term “storage medium” includes any physical object upon which computer data can be recorded, including external and internal hard drives, flash drives, thumb drives, micro SD cards, macro SD cards, DVDs, gaming systems, SIM cards, cellular cellphones capable of storage, floppy disks, compact discs, magnetic tapes, memory cards, memory chips, and other magnetic or optical media.